Now it seems to me that, in order to succeed in his claim, all that the plaintiff had to prove was that he was in entitled possession of the lorry and that the defendant had taken it away. He did not strictly have to prove ownership, though he did so, and I hold this view because, as I stated above, the plaintiff's claim was essentially and basically an action for trespass to his goods.

If this view is correct, it follows that the plaintiff was under no obligation whatever, in order to prove his case, to prove in addition that he and the defendant practised a deceit on the public administration of this country with regard to a haulage permit. It is in this connection that I feel, with great respect, that the learned trial Judge was mistaken. Indeed, the pleadings shew that the plaintiff was forced to refer to the haulage permit issue by the defence set up.

The judiciary has adopted for its own guidance, and in the public interest, a rule of conduct that any party litigant shall not be allowed, either in support of his claim, or in answer to that of his opponent, to set up his own fraud, illegality or wrong. *Winfield* (3rd edition page 28) suggests an acceptable rule namely that a plaintiff can sue for, and recover, damages in tort, unless allowing him to do so would be against public policy in general, or would be the condonation of a breach of public morals or public safety in particular.

In the present case I do not consider that the plaintiff was setting up against the defendant any fraud, illegality or wrong. Nor can I see that the straightforward transaction of sale between the parties was against public policy or a breach of public morals or safety. In the circumstances I am of opinion that to invoke 'moral estoppel' against the appellant was not justified.

In this connection I must refer to the case of *Bowmakers, Ltd. v. Barnet Instruments, Ltd.*[3]. That case was one of conversion and the parties had committed a breach of certain Defence Regulations. I quote from the judgment of the Court of appeal delivered by Du Parcq L.J. :—

> "*Prima facie*, a man is entitled to his own property, and it is not a general principle of our law (as was suggested) that when one man's goods have got into another's possession in consequence of some unlawful dealings between them, the true owner can never be allowed to recover those goods by an action. The necessity of such a principle to the interest and advancement of public policy is certainly not obvious. The suggestion that it exists is not, in our opinion, supported by authority.
>
> In our opinion, a man's right to possess his own chattels will as a general rule be enforced against one who, without any claim or right, is detaining them, or has converted them to his own use, even though it may appear either from the pleadings, or in the course of the trial, that the chattels in question came into the defendant's possession by reason of an illegal contract between himself and the plaintiff, provided that the plaintiff does not seek, and is not forced, either to found his claim on the illegal contract or to plead its illegality in order to support his claim."

I can see no reason why the terms of this judgment should not be equally applicable to a case of trespass to goods.

I would therefore allow this appeal enter judgment for the appellant, giving him the declaration he sought and ordering the respondent to return lorry No. M. 2207 or to pay in the alternative its value at the time of seizure. That value to be ascertained by the Registrar, with interest at the rate of 6% per annum. In addition, I consider that the appellant should have the costs of this appeal and the taxed costs of the proceedings in the lower Court and that the deposit should also be paid out to him against his taxed costs.

Appeal allowed.

LEE LEONG SIM v. REG.

[A. Cr. J. (Rigby J.) March 15, 1957]

[Penang — Criminal Appeal No. 39 of 1956]

Common Gaming Houses Ordinance, 1953 — Pin-tables — Whether articles are used in or for the purpose of gaming.

In this case the appellant appealed against his conviction on a charge of assisting in the management of a common gaming house, to wit, by operating lotto pin-tables. The prosecution case was that on a visit to a certain premises in Queen Street in pursuance of a search warrant, the police found a number of pin-tables on the premises at which various persons were playing. The appellant was in charge of the machines. The Police Inspector who visited the premises watched one of the players playing at a pin-table. The pin-table was marked "Try Your Skill. Gambling Strictly Prohibited. For Amusement Only." Two of the persons, who were playing at the pin-tables were called as prosecution witnesses and they both said they were playing for amusement only.

Held: (1) there was no evidence before the learned Magistrate that the pin-tables were articles used in or for the purpose of gaming;

(2) even if the pin-tables had been shown to be instruments of gaming within the meaning of the Ordinance and for that reason the presumption had arisen that the premises were a common gaming house and that they were so kept or used by the occupier, that presumption was rebutted by the evidence of the prosecution itself.

MAGISTRATE'S CRIMINAL APPEAL.

Lim Cheng Poh for the appellant.

F. G. Cooke (Federal Counsel) for the respondent.

Rigby J. : — The appellant was convicted before the learned Magistrate of an offence contrary to section 4 of the Common Gaming Houses Ordinance, 1953. Upon conviction, he was fined the sum of $300 or two months' imprisonment in default of payment.

The particulars of the charge were that he, on the 28th day of September, 1956, at about 3.50 p.m. did assist in the management of a place used as a common

gaming house, to wit, by operating lotto pin-tables, at No. 38-A, Queen Street, Penang, and that he thereby committed an offence punishable under section 4(1)(c) of the Common Gaming Houses Ordinance.

The brief facts of the case were that on the day and at the time in question a Police Inspector, acting in pursuance of a search warrant issued to him for the purpose, visited the premises referred to in the charge. There were a number of pin-tables on the premises at which various persons were playing. The Police Inspector watched one of the players trying his luck. The player inserted 5 20-cent pieces into the machine, but on each occasion was unsuccessful in getting a winning combination of numbers. The Police Inspector then stopped the play, took possession of the machine and detained the appellant, who was in charge of the machines. The machine was found to contain $76 in 20-cent pieces. Another machine was found to contain $63.40, also in 20-cent pieces. The machines were marked "Try your skill. Gambling strictly prohibited. For amusement only".

A Police Officer, who professed to have some past experience of the operation of these pin-tables gave evidence as to the manner in which they were manipulated. It would appear that if the player scored over a certain number with the balls at his disposal, or if he obtained a winning combination of numbers, the balls were returned to him on the machine and he got another free turn. Every time the player won he would get another free turn. The Police Officer expressed the opinion, which I have no doubt was correct, that the game was one of chance.

Two of the persons, who had been with the machines at the time of the visit of the Police Inspector, were called as prosecution witnesses. Both of them said that they had been playing for amusement only. There was no evidence that they were playing for money or for a prize in lieu of money. It is true that one of the players did say in re-examination that if he won he would get a cup of free tea in lieu of playing a further free game. This would appear to have been merely an assumption on his part and there was no independent evidence to support that assumption. It is not referred to by the Magistrate in his grounds of judgment and for the purposes of this appeal I disregard it.

That concluded the evidence for the prosecution.

The learned Counsel for the appellant, on that evidence, submitted that there was no case to answer. The learned Magistrate, however, overruled his submission and called upon the appellant for his defence. The appellant, in the exercise of his statutory right, elected to say nothing. The learned Magistrate thereupon convicted him of the offence as charged. In doing so, the Magistrate held in his grounds of judgment that the pin-tables were instruments for gaming and since the premises had been entered under the provisions of section 19 of the Ordinance, in accordance with a search warrant issued by a Senior Police Officer, the presumption arose under that section that the place was a common gaming house and that it was kept or used as such by the occupier, until the contrary was proved. He then held that the presumption had not been rebutted.

With respect to the learned Magistrate I find myself quite unable to agree with his argument. The expression "instruments or appliances for gaming" is defined in section 2 of the Ordinance to include "all articles declared under sub-section (2) to be instruments or appliances for gaming and all articles which are used in or for the purpose of gaming or a lottery".

Sub-section (2) provides that "The Chief Secretary may from time to time by notification in the Gazette declare articles specified or described in such notification to be instruments or appliances for gaming". It is clear that pin-tables have never been declared "instruments or appliances for gaming" by the Chief Secretary under the provisions of this section. It was, therefore, necessary for the prosecution to fall back on the latter part of that definition and to establish that these pin-tables were "articles which are used in or for the purpose of gaming".

"Gaming" itself is defined in the section to mean "the playing of any game of chance or of mixed chance and skill for money or money's worth".

It is admitted that there was no evidence whatsoever that these games were being played for money. It was contended, however, by the learned Deputy Public Prosecutor that by the very fact that a player, once he had inserted his original 20-cent piece, got one or more free games every time he was successful, that constituted "money's worth" within the meaning of the Ordinance. I cannot accept this argument. First, the evidence itself shows that the electrical current operating each machine ran only for a limited period of time, so that if the successful player did not at once take advantage of his winning to play a further free game that opportunity was lost by the current being cut off. So that the successful player had no vested right to play again whenever he pleased but only a very limited interest. But quite apart from that consideration, I myself entertain no doubt that "money's worth" within the definition clearly means a valuable and tangible consideration in lieu of money, such as, of course, a prize.

I am, therefore, of the opinion that there was no evidence before the learned Magistrate that the pin-tables, as such, were articles used in or for the purpose of gaming. They were, no doubt, articles which were capable of being kept or being used for gaming, but there was no positive evidence whatsoever that they were, in fact, being kept or used for gaming.

But I go further and say that even assuming they were, in fact, gaming instruments within the meaning of the Ordinance and, for that reason, the presumption had arisen that the premises were a common gaming house and that they were so kept or used by the occupier, that presumption was rebutted by the evidence of the prosecution itself. Both the witnesses called for the prosecution categorically stated that they were playing the game for amusement only. Whether or not their evidence on this matter was true is immaterial. It was the uncontradicted evidence adduced by the prosecution itself and, as such, it clearly rebutted any presumption that might have arisen under section 19 that the place was a common gaming house.

For these reasons I am clearly of the opinion, and I so hold, that this appeal must be allowed. The conviction is quashed; the fine of $300 must be repaid to the appellant. The two pin-tables must also be returned to the appellant, together with the sums of $76 and $63.40 respectively found therein.

I would only add, in conclusion, that if those responsible for the preservation of law and order take such a serious view of the operation of pin-tables in the Settlement of Penang and Province Wellesley, then nothing, surely, can be simpler than for an application to be made to the Chief Secretary for him to declare, by notification published in the Gazette under section 2(2) of the Common Gaming Houses Ordinance, that such articles are "instrument or appliances for gaming" within the meaning of the Ordinance.

Appeal allowed.

Solicitors: *Pillai, Lim, Lee & Hwang.*

SULAIMAN v. CHOONG YOON CHONG

[O. C. J. (Smith J.) March 19, 1957]

[Seremban — Election Petition No. 1 of 1957]

Election — Town Council Elections (Town Council of Seremban) Regulations, 1953 — Election petition — Election Petition Rules, 1954.

In this case the respondent applied for the election petition to be dismissed (a) because no deposit of money by way of security for costs had been made as prescribed by the Election Petition Rules, 1954, and (b) because the remedy sought, that is an order for recount to discover whether any votes cast had not been counted, was not one which could be obtained by way of an election petition. The deposit in this case had been made with the Registrar of the Supreme Court instead of with the proper officer.

Held: (1) the power to dismiss the petition if a deposit is not made is discretionary and in this case as there had been sufficient compliance with the spirit of the Regulations it would be inequitable to refuse the petitioner a hearing of his petition;

(2) if a statement of the poll after counting the ballot as required by Regulation 42 of the Town Council Elections (Town Council of Seremban) Regulations, 1953 had been published, it would have been possible to discover from the statement whether any votes cast had not been counted;

(3) in this case the statement of the poll after counting the ballot did not follow the prescribed form and therefore the application would be adjourned to allow the parties or either of them to take steps to secure the publication of the statement in the prescribed form.

ELECTION PETITION.

E. Joseph for the petitioner.

Respondent in person.

Smith J. : — Two applications made by the respondent are at present before the Court.

The first is that the petition should be dismissed because no deposit of money by way of security for costs has been made in the manner prescribed by the Election Petition Rules, 1954.

It will be convenient to set out in extenso Rules 12 and 13(1): —

"12. (1) At the time of the presentation of the petition, or within three days afterwards, security for the payment of all costs, charges, and expenses that may become payable by the petitioner shall be given on behalf of the petitioner.

(2) The security shall be to an amount of not less than five hundred dollars. If the number of charges in any petition shall exceed three, additional security to an amount of two hundred and fifty dollars shall be given in respect of each charge in excess of the first three. The security required by this Rule shall be given by a deposit of money.

(3) If security as in this Rule provided is not given by the petitioner, no further proceedings shall be had on the petition, and the respondent may apply to the Judge for an order directing the dismissal of the petition and for the payment of the respondent's costs. The costs of hearing and deciding such application shall be paid as ordered by the Judge, and in default of such order shall form part of the general costs of the petition.

13(1) The deposit of money by way of security for payment of costs, charges and expenses payable by the petitioner shall be made by payment to the proper officer which shall be vested in and drawn upon from time to time by the Chief Justice for the purposes for which security is required by these Rules. A receipt shall be given by the proper officer for the same, which shall forthwith be left at the office of the Registrar by the petitioner."

The facts are that a sufficient deposit was made by the petitioner within the time specified but the deposit was made with the Registrar of the Supreme Court and not with the "proper officer", in this case the Supervisor of the Town Council Elections. The respondent argues that no deposit has been made and he applies for the petition to be dismissed.